

NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND
MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
See Ariz. R. Supreme Court 111(c); ARCAP 28(c); Ariz. R. Crim. P. 31.24

FILED BY CLERK

OCT 27 2010

COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

THE STATE OF ARIZONA,)	2 CA-CR 2010-0239-PR
)	DEPARTMENT A
Respondent,)	
)	<u>MEMORANDUM DECISION</u>
v.)	Not for Publication
)	Rule 111, Rules of
THOMAS WHITE,)	the Supreme Court
)	
Petitioner.)	
_____)	

PETITION FOR REVIEW FROM THE SUPERIOR COURT OF PINAL COUNTY

Cause No. S1100CR200500580

Honorable Boyd T. Johnson, Judge

REVIEW GRANTED; RELIEF DENIED

Thomas White

Tucson
In Propria Persona

B R A M M E R, Presiding Judge.

¶1 Petitioner Thomas White seeks review of an order entered on June 23, 2010, denying the post-conviction relief sought in an of-right petition White had filed pursuant to Rule 32.1 and 32.4(a), Ariz. R. Crim. P. We will not disturb a trial court's denial of post-conviction relief unless it clearly has abused its discretion. *See State v. Bennett*, 213 Ariz. 562, ¶ 17, 146 P.3d 63, 67 (2006).

¶2 On September 1, 2004, a vehicle driven by White struck and fatally injured a pedestrian then left the scene without stopping. White was driving on a suspended driver's license and was reported to have been "extremely intoxicated" at the time. Indicted for four felonies including second-degree murder, he pled guilty to one count of reckless manslaughter. As part of his written plea agreement, he admitted having two historical prior felony convictions and agreed to the imposition of a slightly aggravated, enhanced, eighteen-year sentence of imprisonment. The trial court imposed that stipulated sentence at a hearing on June 26, 2006, at which it also found as an aggravating factor the great emotional harm suffered by the victim's family.

¶3 White filed a notice of post-conviction relief in September 2006, and the trial court appointed counsel, who subsequently filed a notice of review pursuant to Rule 32.4(c)(2), stating she could find no colorable post-conviction claims to raise. White then filed a supplemental, pro se petition, alleging his guilty plea had been involuntary because he had been misinformed about the potential range of sentencing he faced and his sentence should have been enhanced on the basis of only one prior conviction, not two. White asserted trial counsel had rendered ineffective assistance and his sentence was "excessively harsh" in violation of the Eighth and Fourteenth Amendments to the United States Constitution. The relief he requested was a resentencing pursuant to former A.R.S. § 13-604(B), with only one prior felony conviction used for enhancement.¹

¹Arizona's sentencing statutes have been renumbered, effective January 1, 2009. *See* Ariz. Sess. Laws, ch. 301, §§ 1-120. We refer in this decision to the statutes as they were numbered when White committed the offense on September 1, 2004.

¶4 After the state had filed a response to the supplemental petition, the trial court denied relief in October 2007. The court found White’s guilty plea had been knowing and voluntary, he had failed to raise a colorable claim that counsel had been ineffective, and he had been sentenced properly in accordance with both the plea agreement and the lawful sentencing range for White’s class two felony committed with the two historical prior felony convictions White had admitted for purposes of sentence enhancement.

¶5 In April 2010, White filed a document entitled “Re Judicial Notice,” in which he asserted he had not been “served” with a copy of the trial court’s October 2007 ruling at any time before January 2010. Accepting that assertion as true “for the purpose of these proceedings,” the court considered, as supplemental memoranda, the additional pleadings White had filed between October 2007 and January 2010. The court then essentially ratified its earlier denial of post-conviction relief, explaining the basis for its ruling in a written minute entry filed on June 23, 2010. This petition for review followed.²

¶6 In combination, the trial court’s two minute entries adequately identify, analyze, and resolve the issues raised in the petition for post-conviction relief. *See generally State v. Whipple*, 177 Ariz. 272, 274, 866 P.2d 1358, 1360 (App. 1993) (when trial court has ruled correctly on issue “in a fashion that will allow any court in the future

²In the petition for review, White asks to be resentenced “as a first offender with ‘no priors’ [and] no aggravators,” which is different than the relief sought in his supplemental petition below.

to understand the resolution[, n]o useful purpose would be served by this court[’s] rehashing the trial court’s correct ruling in a written decision”). We therefore need not parse or elaborate upon the court’s rulings.

¶7 On review, White has not carried his burden of demonstrating the trial court abused its discretion in denying relief. His contentions regarding *Blakely v. Washington*, 542 U.S. 296 (2004), and the standard of proof applicable to his prior felony convictions are simply not germane here, because White expressly waived all such issues in his plea agreement.³ With respect to his contention that the two historical prior felony convictions he expressly agreed could be used for enhancement were too old to have been valid for that purpose, White has not met his burden of proof or persuasion in establishing his claim. When he committed this offense on September 1, 2004, former § 13-604(V)(2) provided multiple definitions of “[h]istorical prior felony conviction.” See 2003 Ariz. Sess. Laws, ch. 11, § 1. White has not convincingly shown—either below or on review—that none of those statutory definitions encompassed the two prior convictions he agreed the court could use to enhance his sentence. As an example, White has not addressed, nor does the available record establish, whether he had spent any

³Paragraph 11(a) of the plea agreement, beside which White placed his initials, reflects his express waiver of the right to have a jury determine any aggravating sentencing factors beyond a reasonable doubt and his agreement that the court could find the existence of any aggravating or mitigating circumstances by a preponderance of the evidence. Paragraph 8 of the agreement incorporates the “prior conviction addendum,” in which White admitted the existence and validity of the two prior convictions described in the addendum. The “sentencing addendum” sets forth the range of sentence for a nondangerous class two felony with two historical, nondangerous prior convictions, and it contains the parties’ agreement that “[White] shall serve 18 years in prison.”

intervening time, or how much time he had spent, either incarcerated or as an absconder from probation for purposes of subsections (V)(2)(b) and (c) of § 13-604.

¶8 Perhaps more importantly, former § 13-604(V)(2)(d) provided that a historical prior felony conviction includes “[a]ny felony conviction that is a third or more prior felony conviction.” 2003 Ariz. Sess. Laws, ch. 11, § 1. Based on the record before us, it appears White had at least three felony convictions before he was convicted of criminal trespass in 1990. Because the criminal trespass conviction was White’s fourth, possibly fifth, felony conviction, no time limit applied to the conviction that would render it too old to have constituted a historical prior felony conviction for purposes of the instant conviction of reckless manslaughter, as White contended in his petition below and seems to be suggesting on review.

¶9 Because White has failed to show an abuse of the trial court’s discretion, we grant the petition for review but deny relief.

/s/ J. William Brammer, Jr.
J. WILLIAM BRAMMER, JR., Presiding Judge

CONCURRING:

/s/ Joseph W. Howard
JOSEPH W. HOWARD, Chief Judge

/s/ Philip G. Espinosa
PHILIP G. ESPINOSA, Judge